

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2120.04
COMPLAINT INVESTIGATOR:	Jennifer Cambell
DATE OF COMPLAINT:	April 28, 2004
DATE OF REPORT:	May 28, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 28, 2004

**COMPLAINT ISSUES:**

Whether the Franklin Township Community School Corporation and RISE Special Services violated:

511 IAC 7-18-2(a) by failing to provide the student with a free appropriate public education (FAPE), specifically, by putting the student in a de-escalation room.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to:

- a. provide a one-on-one aide at all times exclusively with the student, including the bus;
- b. provide the required amount of occupational therapy (OT); and
- c. use a picture schedule in the classroom.

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee (CCC) meeting upon request of a parent.

511 IAC 7-21-2(a) by failing to ensure that an appropriately licensed or certified teacher or substitute is available to supervise the student's classroom when the teacher is absent.

During the course of this investigation the following two issues were determined not to be relevant to the facts herein:

511 IAC 7-22-2(a) by failing to provide the written notice to the parents at a reasonable time before the public agency refuses to initiate the provision of a free appropriate public education (FAPE).

511 IAC 7-23-1 by failing to permit the parent to inspect the student's educational record upon the parent's written request.

During the course of this investigation an additional issue was defined as whether the school corporation and the planning district violated:

511 IAC 7-27-4(c) (1) and (3) by not addressing in the Student's IEP the Student's need for additional services such as behavioral interventions when the Student's behavior interferes with the Student's learning or the behavior of others and not addressing the concerns of the parent in providing a one on one aide for the student.

**FINDINGS OF FACT:**

1. The Student is six years old, in kindergarten, and is eligible for special education and related services as a student with a traumatic brain injury (TBI).
2. On April 20, 2004, the Student was placed alone in the “de-escalation” room, a room where students are placed for time outs. According to the Time Out Log, on April 20<sup>th</sup> the Student was placed in the room for hitting other students. The Complainant went to pick up the Student from school that day and found the Student sitting in the de-escalation room unattended. The Student’s aide was standing across from the room. The Complainant was upset to find the Student in the de-escalation room because the Complainant asserts that she had verbally requested the School to call her to pick up the Student when the Student’s behavior was out of control. Placing the Student in the de-escalation room is not part of the Student’s IEP. Based on the School’s Use of Time-Out policy/procedures, a time out may be used once with the permission of the Principal. The School acknowledges that the Principal was not asked for permission before the Student was placed in the de-escalation room.
3. The IEP indicates the Student’s behavior does impede the Student’s and other students’ learning, and for that reason, the IEP contains an annual social and behavior goal of improving the Student’s social and behavior skills from a present level of an 18 to 24 month old to a 30 month old level based on the public agency’s Developmental Inventory. The School states that aside from the annual social and behavior goal, the CCC adopted the Complainant’s Behavior Specialist’s document entitled “Behavior Support Plan and Functional Behavioral Assessment” which includes the following information: an overview of current concerns/student’s status; functional behavioral assessment; reactive strategies; proactive strategies; and antecedents to consider.
4. The Complainant states the School verbally agreed to assign a one-on-one aide to the Student at the January 29, 2004, CCC meeting, but have yet to document this service into the IEP. The School acknowledges that the Student is provided a one-on-one aide throughout the school day, as requested by the Complainant. The May 29, 2003, CCC meeting notes, and the January 29, 2004, CCC meeting notes each document the Complainant’s concerns to be the provision of a one-on-one aide for the Student in the general education classroom. The one-on-one aide is not mandated in any IEP.
5. The May 29, 2003, IEP states the Student will receive 120 minutes of occupational therapy (OT) each month and the duration dates of the IEP are May 29, 2003, to January 21, 2004. The January 29, 2004, IEP states the Student will receive OT 120 minutes monthly and the duration dates of the IEP are January 29, 2004, to January 29, 2005. According to the Occupational Therapist’s “Therapy Progress Notes/Attendance” document, the Student did not receive 120 minutes of therapy in November and December of 2003, and January, March, and April of 2004. During this time, the Student was not provided 255 minutes of the required OT.
6. A CCC meeting was held on January 29, 2004. An annual goal was developed in which the Student’s language and communication skills will improve to a 30 month level according to the School’s Developmental Inventory. One of the benchmarks or objectives listed for this goal is for the Student to “follow the picture schedule with minimal assistance 50% of the time.” No documentation exists to show whether or not the School provided the Student a picture schedule to use in the classroom.
7. The Complainant wrote two letters to the School requesting CCC meetings on March 11 and April 21, 2004. No documentation exists to show whether or not the School tried to set up a CCC meeting at the request of the parent.
8. The Complainant alleges that the School did not provide a qualified substitute teacher during the teacher’s absences. No documentation exists to show whether or not the School ensured that an

appropriately licensed or certified teacher served as the substitute teacher on the following days: March 1-5; 9, 10, 12, and April 20, 2004.

## **CONCLUSION**

1. Finding of Fact #2 indicates the School failed to provide the Student a free appropriate public education, specifically, by placing the Student in the de-escalation room without the Principal's permission. Therefore, a violation of 511 IAC 7-18-2(a) is found.
2. (a) Finding of Fact #4 shows that the IEP does not require the School to provide a one-on-one aide to the Student. Therefore, no violation of 511 IAC 7-27-7(a) is found with regard to failing to providing a one-on-one aide to the Student.  
  
(b) Finding of Fact #5 indicates the School failed to provide the required amount of OT to the Student. Therefore, a violation of 511 IAC 7-27-7(a) is found with regard to providing the required amount of OT to the Student.  
  
(c) Finding of Fact #6 shows the School failed to provide to the Student a picture schedule to use in the classroom. Furthermore, this benchmark is ambiguous. Where an ambiguity exists in an IEP, the ambiguity will be construed against the public agency that is responsible for its development and implementation. IEPs and case conference reports have to have sufficient clarity so that both the parent and the school staff know what services a student is to receive, from whom, and whatever other resources will be employed in this endeavor. Therefore, violation of 511 IAC 7-27-7(a) is found with regard to failing to use a picture schedule in the classroom.
3. Finding of Fact #7 indicates the School failed to convene a CCC meeting at the request of the Complainant. Therefore, a violation of 511 IAC 7-27-4(a)(3) is found.
4. Finding of Fact #8 shows that the School failed to provide appropriately licensed or certified personnel to supervise the Student's classroom during the teacher's absence. Therefore, a violation of 511 IAC 7-21-2(a) is found.
5. Findings of Fact #3, and #4, show the School failed to provide a BIP for the Student and failed to take into consideration the parents concerns with regard to the Student's education, specifically, providing the Student a one-on-one assistant. Therefore, a violation of 511 IAC 7-27-4(c)(1) and (3) is found.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

## **CORRECTIVE ACTION:**

The Franklin Township Community School Corporation and RISE Special Services shall:

1. Provide a memorandum to appropriate staff on the School's policy and procedures regarding the use of time out. Submit a copy of the memorandum and a list of recipients of the memorandum to the Division no later than September 10, 2004.
2. Conduct a functional behavioral analysis by September 24, 2004;
3. Convene a CCC meeting, no later than September 24, 2004, to:

- a. discuss the provision of a one-on-one aide and if an agreement is made, the agreement shall be documented in the IEP;
- b. provide compensatory occupational therapy services for the 255 minutes of occupational therapy not provided to the Student during the 2003-2004 school year;
- c. clearly define how and when the picture schedule will be implemented. Clearly document length, frequency, duration, location, and implementers of each service provided to or on behalf of the student. Document when and in what form progress made towards annual goals or short term objectives or benchmarks will be reported to the parents; and
- d. discuss the results and analysis of the FBA and develop a behavior intervention plan to address the various behaviors that impede the Student's educational progress. As required by 511 IAC 7-17-8, the BIP must include positive behavioral intervention strategies and specify what skills will be taught as part of changing the Student's behavior. The BIP shall also identify when an individual strategy, intervention, or consequence will occur, as well as who is responsible for implementing the strategy, intervention, or consequence, and how such implementation will be documented.

A copy of the CCC Report, IEP, FBA, and BIP shall be submitted to the Division no later than September 24, 2004.

4. Provide written information to appropriate staff regarding the requirements of 511 IAC 7-27 –4(a) concerning the circumstances that require case conference committees to convene. A copy of the written memorandum and a list of the recipients of the memorandum shall be submitted to the Division no later than September 10, 2004.
5. Develop and document procedures to ensure that all personnel employed or contracted by the school to provide or supervise the provision of special education and related services shall be appropriately licensed or certified to provide the services for which the individual is employed or contracted in accordance with 511 IAC 7-21-2(a). Submit a copy of the procedures to the Division no later than September 10, 2004.